

REED SMITH LLP  
A limited liability partnership formed in the State of Delaware

1 Michael R. Lozeau (SBN 142893)  
Douglas J. Chermak (SBN 233382)  
2 Lozeau Drury LLP  
1516 Oak Street, Suite 216  
3 Alameda, CA 94501  
Telephone: 510 749 9102  
4 Facsimile: 510 749 9103  
Email: michael@lozeaudrury.com  
5 doug@lozeaudrury.com

6 Andrew L. Packard (SBN 168690)  
Michael P. Lynes (SBN 230462)  
7 Law Offices of Andrew L. Packard  
319 Pleasant Street  
8 Petaluma, CA 94952  
Telephone: 707 763 7227  
9 Facsimile: 415 763 9227  
Email: andrew@packardlawoffices.com

10 Attorneys for Plaintiff  
11 California Sportfishing Protection Alliance

12 John Lynn Smith (SBN 154657)  
13 Email: jlsmith@reedsmith.com  
Julia C. Butler (SBN 199133)  
14 Email: jbutler@reedsmith.com  
REED SMITH LLP  
15 1999 Harrison Street, Suite 2400  
Oakland, CA 94612-3572  
16 **Mailing Address:**  
P.O. Box 2084  
17 Oakland, CA 94604-2084

18 Telephone: +1 510 763 2000  
19 Facsimile: +1 510 273 8832

20 Attorneys for Defendant  
Waste Management Of Alameda County, Inc.

21 UNITED STATES DISTRICT COURT

22 NORTHERN DISTRICT OF CALIFORNIA

23 CALIFORNIA SPORTFISHING PROTECTION  
24 ALLIANCE,

25 Plaintiff,

26 vs.

27 WASTE MANAGEMENT OF ALAMEDA  
COUNTY, INC.,

28 Defendant.

No.: 008-03497

**FIRST AMENDMENT TO CONSENT  
DECREE**

Honorable Samuel Conti

1       **A.     BACKGROUND**

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3           1.       On April 21, 2009, the Court entered the Consent Decree in this action in which,  
4 among other things, Waste Management of Alameda County ("WMAC") agreed to implement  
5 additional best management practices to improve the storm water pollution prevention measures at  
6 the drop inlets and outfalls at its Davis Street Station facility located at 2615 Davis Street in San  
7 Leandro, California (the "Facility"). The parties to the Consent Decree are Plaintiff California  
8 Sportfishing Protection Alliance ("CSPA") and Defendant WMAC. CSPA and WMAC are  
9 collectively referred to herein as the Parties.

10  
11           2.       The Consent Decree set certain deadlines by which WMAC is to take certain actions  
12 to upgrade the storm water treatment system at the Facility's outfalls. Recently, WMAC notified  
13 CSPA that it would be unable to meet those deadlines.

14  
15           3.       As a result, the Parties now desire to amend the Consent Decree to set new deadlines,  
16 extend the termination date of the Consent Decree, provide for an additional payment to CSPA for  
17 additional oversight costs and to provide for a payment to the Rose Foundation in the event that  
18 WMAC materially fails to meet the schedule to take certain actions to upgrade the storm water  
19 treatment system at the Facility's outfalls, as amended herein.

20  
21           4.       Section J(9) of the Consent Decree provides that it may be changed by a written  
22 instrument signed by the Parties.

23  
24           5.       After all Parties have executed this First Amendment to the Consent Decree, the  
25 Parties will submit the First Amendment to the Consent Decree to the Department of Justice and the  
26 United States Environmental Protection Agency (the "Agencies") for a 45-day review period  
27 pursuant to 40 C.F.R. Section 135.5. At the end of this review period, the Parties will advise the  
28

1 Court whether the Agencies had any comments or objections thereto.

2  
3 NOW THEREFORE, with the consent of the Parties to this Consent Decree, it is  
4 ORDERED, ADJUDGED AND DECREED that the Consent Decree be amended as follows:  
5

6 **4. Additional Best Management Practices**  
7

8 Section 4.e. is hereby deleted and replaced in its entirety with the following:  
9

10 e. WMAC shall take the following actions to upgrade the storm water treatment  
11 system at the Facility's outfalls and agrees that the treatment system shall be designed to handle up  
12 to a 15-year, 24-hour storm event.  
13

14 (i) By October 31, 2009, WMAC shall complete an engineering  
15 feasibility study to evaluate a long-term treatment alternative(s) for reducing  
16 total suspended solids ("TSS") and other storm water pollutants below the  
17 bench mark values. This study will include an alternative to treat the storm  
18 water discharged at the Recycling Center outfall (Discharge Point #3). The  
19 study will evaluate treatment systems designed to treat a 15-year, 24-hour  
20 storm event.  
21

22 (ii) By November 30, 2009, WMAC shall select the long-term treatment  
23 alternative(s).  
24

25 (iii) By December 31, 2009, WMAC shall complete design plans and  
26 specifications for the selected long-term treatment alternative(s).  
27  
28

1 (iv) By March 31, 2010, WMAC shall implement the selected long-term  
2 treatment alternative(s).  
3

4 **D. MITIGATION PAYMENT**  
5

6 The following sentence shall be inserted following the original paragraph in this Section:  
7

8 In addition, if WMAC materially fails to meet the schedule in Section 4.e. of the Consent  
9 Decree, as revised herein, then WMAC shall pay the sum of TWENTY-FIVE THOUSAND  
10 DOLLARS (\$25,000) to the Rose Foundation for Communities and the Environment for the sole  
11 purpose of providing grants to environmentally beneficial projects within the San Francisco Bay-  
12 Delta Estuary, relating to water quality improvements in the area. Payment shall be made by  
13 WMAC within THIRTY (30) calendar days of such failure, unless the Parties mutually agree on  
14 another payment schedule. Payment by WMAC shall be made in the form of a single check payable  
15 to the "Rose Foundation."  
16

17 **E. ATTORNEY'S FEES AND COSTS; COMPLIANCE OVERSIGHT COSTS**  
18

19 The following paragraph shall be inserted following the original paragraph in this Section:  
20

21 In addition, as reimbursement for CSPA's future costs that will be incurred in order for  
22 CSPA to monitor WMAC's compliance with this First Amendment to the Consent Decree and to  
23 effectively meet and confer, WMAC shall pay CSPA the sum of FIVE THOUSAND DOLLARS  
24 (\$5,000) for costs to be incurred in overseeing the implementation of this First Amendment to the  
25 Consent Decree. Payment shall be made by WMAC within thirty (30) days of the last signature by a  
26 Party to this First Amendment to the Consent Decree. Payment by WMAC to CSPA shall be made  
27 in the form of a single check payable to "Lozeau Drury LLP Attorney-Client Trust Account."  
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1 II. TERMINATION DATE OF CONSENT DECREE

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3 Section H is hereby deleted in its entirety and replaced with the following sentence:

4  
5 This Consent Decree shall terminate on December 15, 2012.

6  
7 This Amendment shall be effective upon the date of the last signature by a Party to this Amendment.  
8 Except as modified by this Amendment, the Consent Decree shall remain unchanged and in full  
9 force and effect.

10  
11 SO AGREED AND STIPULATED:

12  
13 Dated: 27 Oct 09

CALIFORNIA SPORTFISHING PROTECTION  
ALLIANCE

14 By: Bill Jennings Chairman  
(Title)

15  
16 Dated: 10/29/09

WASTE MANAGEMENT OF ALAMEDA  
COUNTY, INC.

17 By: Scott H. [Signature]  
(Title)  
Vice President & Assistant Secretary

18  
19 APPROVED AS TO FORM:

20 LOZEAU DRURY LLP

21 Michael R. Lozeau  
22 Michael R. Lozeau  
Attorneys for Plaintiff

23 REED SMITH LLP

24 John Lynn Smith  
25 John Lynn Smith  
26 Attorneys for Defendant



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**IT IS SO ORDERED.**

Dated and entered into on \_\_\_\_\_.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

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